JURORS' EVALUATION OF EXPERT PSYCHIATRIC TESTIMONY

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The specific concern of this paper is to describe jurors' reactions to expert psychiatric testimony in a criminal trial involving a charge of incest and a plea of insanity. Placing the question in its broadest context, the practice of experts appearing in the court has given rise to two widely recognized problems: How much authority should be delegated to the experts; and, how much should the trial procedures be changed so as to make more professionally responsible the court-rooms' utilization of the expert testimony. In this article we shall address ourselves to a less well recognized question, but one which we believe has a logical priority over the two indicated above, so long as one assumes continuation of existing court procedures. Namely, we need to know how jurors interpret and act upon the psychiatric testimony they receive before we can reasonably recommend modifications of current practice. In this connection we shall comment briefly on the historical background and the essence of the current controversy over expert testimony and report some tentative findings from research based on the American jury system.

I

The practice of the courts of calling in experts to advise them on matters not generally known to the average person has been followed, certainly in English courts, for well over four centuries. Initially, the experts were used as technical assistants to the court, rather than as witnesses. The judge summoned experts to inform him about technical matters; and, he then determined whether or not the information should be passed on to the jury. By the middle of the 17th century, when the finding of the facts had become the exclusive province of the jury, the practice of the court-appointed expert reporting to the judge was also abandoned; and instead the expert was called as a witness by the parties involved in the dispute.[1] In one of the more famous of the early cases Sir Thomas Brown, generally reputed to be the most eminent physician of his time, testified before an English court in a witchcraft trial. He stated that there were such things as witches and that in his opinion the three persons pointed out to him in court "were bewitched."

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[1] For a more detailed account see: Wigmore, A Students' Textbook of the Law of Evidence 1-23 and 125-160 (1935); Guttmacher & Weihofen, Psychiatry and the Law 205-209 (1952); Overholser, The Psychiatrist and the Law (1953).

Concerning the current controversy, let us hear first from the psychiatrists. Perhaps the chief complaints of the psychiatrists lie in the adversary nature of the proceedings. They assert that the atmosphere of the courtroom is incompatible in both aims and procedure with the usual surroundings and expectations associated with the role of the physician. The courtroom resembles neither the examining room nor the laboratory. The expectations involved in the patient-doctor relationship are such that the doctor rarely hears either his authority or his technical skill questioned. It is also a relationship in which both participants believe that the doctor will act responsibly.[2] However, as Guttmacher and Weihofen have indicated,

> A trial is not a scientific investigation, it is not a search for objective truth. The doctor who undertakes to go into court to testify as an expert witness must bear in mind that he is stepping squarely into the middle of a fight.[3]

In addition the psychiatrists note that in the courtroom the expert is subject to cross-examination; that he may be asked to give categorical replies on matters that he believes are heavily shaded by special circumstances or unique events. He may hear his own opinions compared with those of a colleague, whom he knows to be less competent in the area in which he is testifying.

The expert may be asked to state his opinion on hypothetical questions which he believes have no bearing on the particular proceeding, or indeed which may illustrate a point that is contradictory to the case at hand. He may find that his attempts to present a full clinical account of the nature of the defendants symptoms are objected to as irrelevant; and instead he may be asked to state his views on matters that he believes are non-related both to his own area of expertise and to the nature of the case. Questions concerning the defendant's sense of responsibility, and his understanding of right from wrong are usually directed to the medical expert. As Dr. Guttmacher stated in a special issue of the University of Chicago Law Review commemorating the *Durham* decision,

> Most psychiatrists who have had courtroom experience feel that they have been as greatly hampered from giving honest and effective assistance to the court by the methods and rules of legal procedure as they have been by working in the M'Naghten strait jacket.[4]

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[2] For a fuller discussion of the patient-doctor relationship, see Parsons, The Social Systems 428-479 (1951).

[3] Guttmacher & Weihofen, *op. cit. supra* note 1, at 205.

[4] Guttmacher, "The Psychiatrist as an Expert Witness," 22 U. Chi. L. Rev. 329 (1955).

So much for the psychiatrists' side of the story; how do lawyers view the problem? Even before the expert takes the stand, the lawyer may be fearful that the psychiatrist's orientation, his view of human nature, of the origins of conforming behavior in contrast to criminal behavior, may be so far removed from the legal orientation that his opinion can have no relevance for the ongoing trial.

A frequently cited source of concern for the lawyer is the belief that, unless the function of the expert is carefully delineated, he could, by the combined effects of his general prestige and his detailed technical knowledge, virtually dictate to the jury the outcome of the case. While the lawyer may be fearful of the potential influence of the psychiatrist, he may be also somewhat skeptical of the "scienticity" of the discipline he represents. The lawyer may be dismayed by the open, and at times bitter, conflicts that have been waged in the courtroom between proponents of "different schools of psychiatry." He has witnessed what in the past, especially in major criminal trials, was not an infrequent occurence, that of heated intra-professional controversies between psychiatrists called by the opposing sides.[5]

For many members of the bar, the problem becomes one of a control of power, even when it is in the hand of a benevolent representative. The expert, as many lawyers have indicated, should be available when needed, but in a situation in which he clearly performs as a witness whose credibility is subject to the usual scrutiny of the jury.

This brief review of the attitudes of practicing lawyers and psychiatrists to the expert's performance in the courtroom has served as an introduction to the major concern of this paper. The comments of the experts are directed primarily to one audience, the jury. How does this body of judges evaluate the performance they have heard? Before discussing our results, a brief description of the larger research project and of the data collecting procedures shall be presented.

II

The research reported here is part of a much larger study of the American jury system that has been in progress at the Law School of the University of Chicago since 1953. In carrying out this study a variety of methods have been employed from the analysis of

[5] At the present time at least twenty states have statutes which authorize the court to appoint experts and report. The same provision is also found in the Federal Rules of Criminal Procedure. As the practice of court-appointed experts becomes more general, perhaps one of the sources of difficulty, that of partisanship among the experts, will be substantially reduced. For a full discussion of this see Wigmore, A Students' Textbook of the Law of Evidence (1935) and Guttmacher & Weihofen, Psychiatry and the Law (1952).

historical documents concerning the origins of the jury system to the carrying out of intensive interviews in the homes of each of the twelve jurors who had recently deliberated together on a case to the presentation of recorded trials based on real cases for the consideration of jurors who are serving on their regular period of jury duty. These recorded trials then are replicated before a number of different juries. The results of these various lines of research are to be published in a series of separate volumes.[6] The present paper draws its data solely from the experimental jury studies.

We have listed below the steps involved in the experimental procedure.

1. An experimental transcript is prepared modeled on an actual transcript that is condensed to last 60 to 90 minutes.
2. The experimental trial is recorded, and the parts of the attorneys and the principals in the case are acted out by members of the law school staff. The aim of the recorded trial is not to produce good drama; the recorded trial has the slowness and tedium of a day in court.
3. With the cooperation of the judges of the court regular jurors are drawn from the jury pools of three metropolitan areas: Chicago, St. Louis and Minneapolis. Jurors are assigned to this case as part of their regular period of service.
4. Before the trial each juror is asked to fill out a questionnaire which elicits much the same information as that acquired during an extensive *voir dire* or pre-trial examination.
5. The jurors listen to a recorded trial.
6. After the trial, but before the deliberation, each juror is asked to state his own verdict.
7. The jurors begin their deliberation, which is recorded. They are told at the outset that their deliberation is being recorded and that while their verdict can in no way affect the principals in the case, the judges of this court are interested in the result of the experiment for guidance in policy-making decisions.

[6] Some of the materials already published reflecting the nature of the research have been cited below. Broeder, "The Function of the Jury: Facts or Fiction?," U. Chi. L. Rev. 386 (1954); Strodtbech and Mann, "Sex Role Differentiation in Jury Deliberation," 19 Sociometry 1-11 (1956); Strodtbeck, James & Hawkins, "Social Status in Jury Deliberations," 22 American Sociological Review 713-719 (1957); James, "Competency in Jury Deliberations," 64 American Journal of Sociology 563-570 (1959); Kalven, "The Jury, The Law and Personal Awards," 19 Ohio St. L.J. 158 (1957); James, "Jurors' Assessment of Criminal Responsibility," Social Problems (1959); Zeisel, Kalven and Bucholz, Delay in the Court (1959). Among the books planned for future publication, one general volume on the experimental jury studies and a second volume dealing specifically with the insanity trials will be included.

8. After the deliberation, each juror is asked to fill out another questionnaire concerning his reactions to the trial and the deliberation. He is also asked to state if his own verdict differs or agrees with that of the group. Thus, on three different occasions: before the deliberation, as part of the group verdict, and again after the deliberation, individual verdicts are obtained.

The transcript used for this experiment was adapted from the case of *United States v. Claison King*,[7] heard originally in the District Court of the District of Columbia in 1956. The recorded trial, renamed *The People v. Jason Lunt* was played before sixty-eight juries in three jurisdictions, Chicago, St. Louis and Minneapolis. As of this time, fifteen of these deliberations have been transcribed and their content analyzed.[8] These fifteen deliberations, along with the questionnaire responses of the entire sample of 816 jurors (68 x 12) form the basis of this paper.

A brief summary of the trial appears below.

> The defendant, Jason Lunt, a lieutenant in the Fire Department, lived with his wife and children, two sons and two daughters, in a metropolitan city on the East Coast. Until the time of his trial the defendant had had no previous history of criminal indictments or mental illness. The series of events leading to his arrest were initiated by his younger daughter who, upon being approached for sexual intercourse two days in succession, went to the police. It is stated that his wife was aware of the incestuous relationships for some time and that she never reported the situation; nor did she testify during the trial.
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> A series of lay witnesses were called by the prosecution. They included the defendant's two daughters, with whom he readily admitted having had sexual intercourse during the past fourteen years. The arresting detective, an old family friend and former associate at the Fire Department, and the Deputy Fire Chief testified that until the incidents reported in this trial were made public it was their belief that the defendant was living a normal life with the members of his family. In defense cross-examination it appeared that the defendant had been erratic in his work at the Fire Department, and at the time of his arrest had been home on sick leave ordered by the physician attached to the Fire Department.
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> The two psychiatrists called by the defense testified that the defendant was suffering from paraphiliac neurosis, which they claimed could be traced to unresolved oedipal tensions. In addition they believed that the defendant's total lack of affect or involvement with his present situation was an indication of mental dis-

[7] United States v. Claison King, Docket Number 665-55 (D.C. 1956).

[8] The deliberations transcribed thus far were randomly selected from the three jurisdictions.

order. There was a history covering some ten to fifteen years in which the defendant was drinking heavily. At no time did the doctors indicate that the defendant was suffering from a psychosis, and on cross-examination they explicitly stated that he was not.

The final witness for the prosecution called in rebuttal was a psychiatrist who had neither examined nor seen the patient before his appearance in the courtroom. He testified that "paraphiliac neurosis" was not a mental, but an emotional disturbance.

In the full research design two experimental variables were included: one was concerned with the rule of law and the other with expert psychiatric testimony. The rules of law that the jurors received from the judge were systematically varied so that one-third of the jurors were instructed along the lines of the traditional *M'Naghten,* or right from wrong version, one-third along the lines of the more recent *Durham,* or product of mental disease formula, and one-third received "no instructions," or no specific criterion concerning the insanity plea. In addition, two versions of the psychiatric testimony were presented. Half the juries heard what we have labeled "model" expert testimony. In this version an attempt was made to present a detailed clinical history of the defendant's illness from infancy until the time of his indictment. Along with the detailed account we sought to present testimony which was as free of technical jargon as ideally could be expected from a medical diagnosis. In the second version, heard by the remaining half of the juries, more "typical" psychiatric testimony was prepared, in which little attempt was made either to present a developmental picture of the defendant's illness or to delete the rather rich sprinkling of technical vocabulary usually heard in such accounts.

The following is an excerpt from the testimony of the first defense psychiatrist. It may serve as an illustration of the "model" version. Dr. Weinstein is being questioned on direct examination.

Q. Doctor, could you recreate for us, perhaps in some detail, a picture of the defendant's illness as you see it?

A. As is the usual practice in psychiatric examinations, in the initial interviews I sought to obtain an intensive case history of the patient's life, placing special emphasis on his very early childhood experiences. In this case, I would say that the defendant's earliest childhood experiences have resulted in a situation in which he still carries around with him deep conflicts and anxieties concerning his relationship with his mother. Now, of course, these conflicts and anxieties are deeply repressed, that is, the defendant is not aware of them; he does not by any means understand that his infantile experiences are causing problems for him today. To be more specific, let me tell you a little of the defendant's childhood experience. Would that be all right?

Mr. HOUSTON: Yes, Doctor, go right ahead.

The WITNESS: Jason Lunt's father either died or deserted his family, we are not sure which, when the patient was six months old, and from then on until the time his mother remarried (the defendant was then six years old), the patient slept in the same bed with his mother. Until the patient's sixth year there were no other adult males in the home with whom the patient could establish a father-son relationship. At the time of the mother's proposed remarriage the defendant was extremely upset and protested bitterly to his mother against the marriage. Now it is generally believed that the oedipus complex, which in boys is represented as love for the mother and both identification and hate for the father figure, starts in the third year of life and reaches its climax in about the fifth year. Thus, at the height of the patient's oedipal attachment to his mother, he was forced for the first time to share his mother's attentions with a man with whom he had no previous contact. The step-father, as it turned out, was a stern, quiet man who exhibited no love or interest in his stepson. The patient was unable to identify with this man as a father figure. Two years later, when the defendant was eight years old, a half brother was born, of whom he was extremely jealous.

The patient's history indicates that he practiced masturbation from the time he was three years old. Young boys, employed by his mother in her confectionery business, I believe it was, first introduced him to this practice by so engaging themselves in his presence. Also, when the patient was between the ages of three and six, his mother, as part of her confectionery business, ran a dance hall; and it was there that the patient had an opportunity to observe patrons of the establishment engage in perverse sexual acts.

Q. Now, Doctor, would you say that these experiences which occurred in the early years of the defendant's life can account for the defendant's behavior when he is a grown man?

A. I would say that they can and do. Let me explain it in this way. Experiences that occur in early childhood constitute the groundwork from which the sexuality of the adult subsequently develops. Any adult who is blocked in his adult sexuality falls back to infantile sexuality as a substitute, because the child experiences his sexuality with the same emotions the adult feels toward his.

An overcoming of oedipal strivings, and replacement by adult sexuality, is the prerequisite for normality, whereas an unconscious clinging to oedipal tendencies characterizes the neurotic mind. Anything that increases fears and thus increases sexual repressions causes disturbances in the subsequent overcoming of the oedipus complex. Furthermore, the oedipus complex is most outspoken in only children, and special complications may be present when there is less than a three family group; this is, when one of the parents is not present.

Now, if I could just go on a little longer to fill in some more details from the patient's history.

Mr. HOUSTON: Yes, Doctor, please do.

The WITNESS: The patient met his wife soon after he entered high school, and they began dating steadily. A few months

after they graduated from high school they were married. The patient had dated no other girl during this period. About two or three months after the couple were married, their first child was born. Since then they have had three other children, so that their family consists of two boys and two girls. There appears to be no indication of any abnormality in the patient's relationship with his sons, or in the sons' behavior generally. The patient claims that his wife has always been frigid, and that intercourse with her was no source of release for him. He also insists that he is over-sexed. He had continued masturbation, though with considerable guilt, until he was past forty years of age.

Q. Now, Doctor, from all the information that you have acquired, what are your conclusions?

A. I would say that Mr. Lunt is what in psychiatric terms we call a psycho-neurotic. Now, by the term psychoneurosis, I mean to describe someone who, on the whole, manages to conform to the demands of ordinary living, but who is the victim of his own inner conflicts. These conflicts usually show themselves in a variety of ways, for example, the person may become overanxious, he may have unjustified fears, or he may suffer from obsessions and compulsions. But essentially such a person appears to be all right even in the eyes of people with whom he may have daily contact, in the sense that he appears to be in touch with reality.

Q. Doctor, given the patient's personal background and experiences, would it be your opinion that behavior such as the type described in this case is a likely outcome?

A. Well, it's always an extremely difficult task to predict or foresee from a person's childhood just what particular behavioral patterns will result when he is an adult, but I would say in this patient's incestuous relationship is not an unexpected result.

The following section, occurring at approximately the same point in the defense's examination of Dr. Weinstein, is illustrative of the "typical" version.

Q. Would you kindly tell us what you have learned on the basis of the examination?

A. It is my opinion that Mr. Lunt is a psychoneurotic patient of long standing. I cannot state specifically the exact date that it started but a total review of his history leads me to conclude that it is of some years standing. The patient's early developmental history indicates that because of the death or desertion of his father, very strong emotional dependence developed between mother and son. This is undoubtedly an important factor in the development of the patient's neurosis which led to his abnormal sexual behavior. The unhealthy state of affairs may be characterized as an oedipus complex.

Along with this, we have the appearance, when the patient was six years old, of a cold rejecting stepfather, thus causing the patient's fears to reach the force of castration anxiety; and this was a further crippling influence insofar as his sexual development was concerned. I might add that one often finds such a background in paraphiliac neurotics.

> And I believe that this condition existed during the period of the alleged offense.

When this research is reported in full, interest will be centered primarily on the intereaction between rule of law and psychiatric testimony. However, for purposes of this report,[9] we shall not attempt to evaluate the effects that the rule of law combined with each of the psychiatric versions have on jury decisions. Instead we shall simply provide the reader with a taste of the nature of the jurors' reactions to psychiatric testimony over the whole design.

Since this report relies so heavily on the data drawn from the experimental study, a word about the realism of the experience is in order. Perhaps a weakness of this procedure is that the jurors do not actually see a trial enacted before them; they can only listen to a recorded version. But even this might have its virtues when we note that the opportunity of presenting exactly the same stimulus before a number of different juries is guaranteed by the recorded trial in a way in which it could never be if the trial had to be re-enacted each time. The fact that the subjects participating in the experiment are persons serving on their regular period of jury service; that they are sent to the experiment by the court; and are instructed by the judge as to the nature of their task; are factors which add immeasurably to the realism of the experience. In addition, the trial that they hear is taken from a real case; the parts are not read by professional actors;[10] the recording has none of the style of a television or radio dramatization. Rather, the proceedings they hear attempt to capture the slowness of tempo, the tedium and much of the repetition that is heard in the courtroom. We have listened to and played before legal and other professional persons literally hundreds of these deliberations, based on recorded trials; and even among those who at the outset were most skeptical there was consensus in noting the intensity and sense of involvement that left little doubt both as to the realism and meaningfulness of the experience for the participants.

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[9] The incest trial reported here represents the second attempt at obtaining jurors' reactions to a plea of insanity in a criminal case. In the first instance, the original *Durham* trial was replicated before twenty juries. Half heard the trial under *M'Naghten,* the other half under *Durham.* In that experiment no variations in the psychiatric testimony were introduced. The full results of both experiments will be reported in a forthcoming volume on "Jurors' Reactions to Alternative Rules of Law in Insanity Cases."

[10] At an earlier time, one of the versions of the first insanity trial was prepared by using a group of professional actors. The stereotyped notion, for example, of how a prosecutor sounds when he cross-examines a witness, made the trial sound like a soap opera.

III

The first cluster of data comes from the questionnaires distributed after the deliberation. Jurors were asked to respond to a series of items concerning the expert psychiatric testimony. The first group of questions sought reactions on the following points:

A—Did the jurors find helpful the testimony of the two psychiatrists called by the defense?
B—Did they want more information from the experts?
C—Did they believe that the language the experts used in testifying was too technical?

It was anticipated that the reactions of the jurors might be related to one or both of the following factors: The version of the psychiatric testimony they had heard; and their disposition to believe the defendant was guilty or not guilty by reason of insanity. Concerning the first factor, it was expected that jurors who heard the psychiatrists present the longer, more detailed, and relatively straightforward description of the defendants sysmptoms would be more likely to find the expert testimony helpful; would have less need for further information; and would be less likely to believe that the language employed by the experts was too technical.

On the relationship between verdicts and the above questions, it was thought that the jurors who found the defendant not guilty by reason of insanity generally would be more appreciative and, perhaps, less critical of the experts' testimony. They might be less likely to believe that additional information was needed or that the language employed by the experts was too technical.

Let us now examine the data. Concerning item A, about three quarters, or 74 per cent, of the jurors indicated that they found the testimony helpful. No differences were observed between jurors who heard the "model" as compared with those who heard the "typical" testimony; or between jurors who found guilty and those who found not guilty by reason of insanity.

The responses to item B had much the same flavor as those given to item A. On this question, two thirds of the jurors indicated no expressed need for further information. Jurors who heard the "typical" version of the psychiatric testimony expressed no greater need for more information than those who heard the longer and more detailed "model" version.

As indicated in Table 1, shown below, of the one-third minority who did want more information, the need was significantly greater among jurors who believed the defendant was not guilty by reason of

insanity; 44 per cent in contrast to 29 per cent for the guilty—prone jurors.

TABLE 1

PER CENT OF JURORS INDICATING THAT THEY WANTED MORE INFORMATION FROM THE TWO DEFENSE PSYCHIATRISTS, BY EDUCATION AND VERDICTS*

Verdict	Grade	High	College	Combined
NGI	35 (62)**	46 (139)	48 (58)	44 (259)
Guilty	26 (112)	29 (276)	30 (164)	29 (552)
Combined	29 (174)	35 (415)	35 (222)	33 (811)

* [X_2^2 df (.99) = 9.2, $X^2 = 16.97$ $P < .01$.]

** Frequencies are in parentheses.

When the jurors were divided into different educational categories, it may be noted that this relationship between a verdict of not guilty by reason of insanity and a desire for more information was distributed relatively evenly across each of the educational groupings.

Jurors' responses to item C followed much the same pattern in that slightly more than two thirds, or 69 per cent, of the responses expressed no dissatisfaction with the language employed by the experts. Jurors who heard the "model" version were only slightly less critical than those who heard the "typical" testimony. Of the former, 71 per cent did not believe that the language was too technical, while of the latter 65 per cent indicated that they did not find the language too technical. These differences are not statistically significant.

As shown in Table 2, listed below, the belief of the jurors concerning the guilt or insanity of the defendant was not a significant factor.

TABLE 2

PERCENT OF JURORS INDICATING THAT THE LANGUAGE OF THE DEFENSE PSYCHIATRISTS WAS TOO TECHNICAL, BY EDUCATION* AND VERDICTS

Verdict	Grade	High	College	Combined
NGI	39 (62)**	35 (139)	28 (58)	34 (259)
Guilty	37 (112)	32 (276)	20 (164)	29 (552)
Combined	38 (174)	33 (415)	22 (222)	31 (811)

* [X_2^2 df (.95) = 6.0, $X^2 = 8.97$ $P < .05$.]

** Frequencies are in parentheses.

Of the 31 per cent who found the language too technical, 34 per cent were jurors who believed the defendant not guilty by reason of in-

sanity and 29 per cent were jurors who believed the defendant guilty. It may be noted that of this 31 per cent, a significantly high contribution was made by jurors with a grade school education: 38 per cent in contrast to only 22 per cent for the college educated jurors.

In summary, the responses of at least two thirds of the jurors to these rather general questions indicated that they had a favorable, if somewhat uncritical reaction to the experts' performance. The responses did not indicate that there was a systematic tendency to view the model testimony any more favorably or less critically than the typical testimony. It is interesting that, in contrast to our expectations, the jurors who found the defendant not guilty by reason of insanity were no more appreciative of the experts' performance and they did indicate a greater desire for more information than the guilty—prone jurors. It would almost seem that, having gone along with the psychiatrists' views on the matter, they would have liked even more information in order to further substantiate their own beliefs. As we move to an examination of more specific questions, we shall see if the trends reported here are substantiated.

The next series of items sought to compare jurors' evaluation of expert, in contrast to lay, testimony as the testimony might have influenced their decision in the case. The total number of witnesses appearing for both sides was eight: four lay and one expert witness were called by the prosecution, and two expert witnesses were called by the defense. The defendant did not take the stand but the statement he gave immediately after he was picked up by the police was read into the record by the prosecuting attorney.

Concerning the order and length of testimony, the prosecution opened his case by calling the two complaining witnesses; the testimony of Henrietta, the younger daughter, preceded that of Roberta, the older one. They in turn were followed by a family friend and former colleague in the fire department, and finally by Detective McKay, the arresting officer. For the defense, Dr. Weinstein preceded Dr. Fairchild. On rebuttal, the prosecution recalled the family friend, then the detective, and for the first time he called the deputy fire chief who was also the defendant's immediate superior in the municipal fire department, and finally, also for the first time, an expert witness, a psychiatrist, Dr. Grant. In both the "model" and "typical" versions, the combined testimony of the two defense psychiatrists was the longest, with Dr. Weinstein's taking slightly longer than Dr. Fairchild's. Next in order of length of time on the witness stand was the deputy fire chief, followed by the arresting officer, the younger daughter, the family friend, the older daughter, and finally the government psychiatrist.

On the questionnaire, next to the names of each of the witnesses, the jurors were asked: How important was this testimony in causing you to hold the opinion you have? In response, the jurors were to check one of the following:

— very important
— fairly important
— not important.

In Table 3, shown below, jurors were divided into three groups: those who rated the testimony of all, or from five to seven of the witnesses[11] very important; those who rated three or four very important; and those who rated two or less of the witnesses' testimony very important. The reason for this division was to differentiate into relatively homogeneous groups those jurors who were likely to have a restrained or critical reaction to all the testimony they heard, those who were intermediate in their critical assessment, and those who found importance in everything they heard.

TABLE 3
A COMPARISON OF THE PER CENT OF JURORS RATING EXPERT AND LAY TESTIMONY VERY IMPORTANT

Number of Witnesses Juror Rated Very Important	Expert 1st Def Psych	Expert 2nd Def Psych	Expert Govt Psych	Lay Two Dau's	Lay Friend	Lay Arrest Officer	Lay Deputy Fire Chief	Combined
5-7	91	92	89	91	80	76	73	85 (271)*
3-4	66	60	45	70	46	28	37	54 (326)
0-2	20	17	10	44	19	7	14	25 (215)
Combined	62	60	50	70	50	39	43	57 (812)

* Frequencies are in parentheses.

We note, from Table 3, that jurors in each of the groups found the testimony of the daughters, that is the prosecution's principal witnesses, equally or more important than they found the testimony of the psychiatrists. However, only among the jurors in the "0-2 category" are the differences in favor of the daughters of a significant magnitude.

It might be of interest to compare the importance ratings re-

[11] The jurors were asked to make one rating for the testimony of both daughters. In total, then, there were seven witnesses to be rated.

ceived by the witnesses with the length of their appearance on the stand. In the preparation of the experimental transcript an attempt was made to delete as much of the repetitious material as possible without, of course, seriously jeopardizing the realism of the experience. It may be assumed that all of the testimony that was retained was considered relevant to some degree.

Length of Time on Stand	Witness	Importance Rating
3	Both daughters[12]	1
1	First Defense Psychiatrist	2
2	Second Defense Psychiatrist	3
6, 7	Friend-Government Psychiatrist	4½, 4½
4	Deputy Fire Chief	6
5	Arresting Officer	7

The testimony of the two defense psychiatrists was rated second and third in importance; it was exceeded only by that of the complaining witnesses.[13] The expert testimony, however, was rated no more important than might be anticipated if one were estimating the importance of the psychiatrists' influence from the amount of time that the jurors were exposed to their views. Also, if the percentage of very important ratings received by the defense psychiatrists were compared with the combined row per cents that appear in the final column (85, 54, 25) in each of the three juror categories, the difference between the psychiatrists and the combined per cents is only slightly in favor of the experts.

In Table 4, on page 89, the jurors' ratings of the experts in the "model" and "typical" versions were compared. The expectation was that the jurors would differentiate between the "model" and "typical" versions, such that the defense psychiatrists would receive a higher percentage of very important ratings from jurors who heard the "model" version. No changes were made in the testimony of the government psychiatrist; his ratings were included only for purposes of comparison.

It may be noted that the testimony of the defense psychiatrists was not perceived as being any more important in the "model" than it was in the "typical" version. If anything, there is a slight indication of a difference in the opposite direction, but it is far from significant.

While it appeared from the jurors' responses to the first set of

12 This ranking represents the combined testimony of both daughters.

13 It should be noted that the two daughters were the first two witnesses to appear in the trial; and it may be that a primacy factor is operative, thereby causing the jurors to remember their testimony more clearly than they remember the testimony of the other, later witnesses.

items on the questionnaire that they were generally favorable if somewhat uncritical in their appraisal of the expert psychiatric testimony, it now appears that they allowed the experts no greater influence on their final decision than might have been expected from the relative amount of time devoted to the psychiatric testimony during the trial.

TABLE 4

PER CENT OF JURORS RATING THE EXPERT TESTIMONY VERY IMPORTANT, BY VERSION OF TRIAL

Number of Witnesses Rated Very Important	Model 1st Def Psych	Model 2nd Def Psych	Model Govt Psych	Typical 1st Def Psych	Typical 2nd Def Psych	Typical Govt Psych	Combined
5-7	92	91	90	91	92	88	91 (271)*
3-4	65	62	49	66	59	41	59 (326)
0-2	24	18	9	16	16	10	17 (215)
Combined	60	57	48	64	62	52	59 (812)

* Frequencies are in parentheses.

However, it might well be that asking subjects to respond to items on a questionnaire so structures the situation that the respondents do not feel free to report their own feelings. Perhaps, if we turn to an examination of the transcripts of the deliberations and note the verbatim comments of the jurors, a more complete picture of the jurors' reactions to the experts' testimony can be reported. One word of caution: In presenting, as we do at this time, only those portions of the deliberations in which expert testimony is explicitly mentioned, we have not exhausted the relevance of the deliberations for this topic. It may be equally as important to indicate the other sources of reference that jurors rely upon in their assessment of the defendant's behavior when the expert testimony is not discussed: Such factors, for example, as having had direct contact with institutionalized persons. But, here again, a full and systematic analysis of the content of the deliberations must await publication of the whole range of insanity cases.

IV

The main brunt of the jurors' discussion of the expert psychiatric testimony consisted of a detailed examination of what the doctors included or failed to include in their testimony, and the implications of

this testimony for the plea of insanity offered by the defense. That is, did the testimony provide adequate guidance to a body of laymen delegated the responsibility of determining whether or not the defendant should be declared legally insane? The following are quotations selected from the fifteen typed protocols of the deliberations presently available. The first excerpt may serve to establish the general tone of the jurors' comments. It was taken from a jury that heard the "typical" expert testimony, and the comment was made after the discussion had been going on for about half an hour.

> Here you have two psychologists, psychiatrists, who knew and worked with the man, say that he is insane. I don't just have to sit here and say that the man isn't. When two medical men, of course you don't have to believe in doctors, some people don't. Secondly there are people who do not believe in psychiatrists, but I personally do and I wouldn't ever put a man in prison, when psychiatrists get up and say that the man is emotionally disturbed, when he is sick. Is there anybody in this room that doesn't believe in psychiatry? That's the whole thing in my estimation. It's whether or not you are going to take the word of these two men, who are well known and are admired in the field, and have excellent jobs. They are impartial. They're working for the county hospital. Are you going to take their word, or are you going to sit there and say that we know. We don't even know this man. They worked with him, they both say that he is mentally disturbed. If you don't take that as proof, I don't know what you are going to do. I mean to me, in other words, if you don't find him not guilty by reason of insanity, you're sitting here disregarding the two psychiatrists in the case.

A few minutes later, in the same deliberation, another juror responded.

> What I'm trying to say is just because these two people are educated and they are way up over our heads that we have to accept what they say as truth and that's it. In other words, they would be deciding for us, then we are not deciding for ourselves what is right in this particular case.

A third juror interrupted to agree:

> If that's the case, this case shouldn't ever have gone to a jury. I mean that we should have to depend upon men specialized in the field of psychiatry to judge this man.

The second juror continued:

> That's right, you don't need a jury if you are going to take two doctors' words and say that this man is insane. Why do you need a jury?

During the trial, in cross-examination both defense psychiatrists had insisted that insanity was a judicial term and involved a determination which they "did not feel qualified to make." This statement

was the source of considerable puzzlement in practically every deliberation. One juror expressed it this way:

> What I don't clearly understand is are we talking in terms of legal insanity; or technical insanity; or medical insanity, the jargon of the psychiatrists? In the jargon of the psychiatrists, they do not declare him insane; they do not associate this man with the term that they generally associate with insanity, people who do not have control over their actions. The word psychosis came up, but they do not identify this man with having a psychosis, he had a mental disorder.

Later in the deliberation the same juror commented:

> My argument is that the experts do not associate a mental illness to this man that has significance in terms of insanity. He had a mental disorder but was it such that the man was not responsible for his actions?

For some jurors the fact that the psychiatrists could not state whether or not the defendant was insane, was a reflection of their own competence and perhaps of the competence of the entire field. One juror expressed it this way:

> Don't you think doctors with such high standards as they should have would have been able to tell you a little more surely, whether they thought he was insane or not?

Or, as several jurors observed in another deliberation:

> As far as I can see, the defense psychiatrists didn't come right out and say that they thought the man was insane. They wouldn't say that.
> No, they did—didn't. They didn't state it right out. They were only giving ideas of their own which are never always correct.
> Now when it comes to mental sickness, everyone has their own. Mental sickness isn't insanity.

Perhaps the main point of discussion stimulated by the expert testimony was the meaning of the distinction between neuroses and psychoses. During the trial, each expert had testified that in his opinion the defendant was not psychotic, but that he was suffering from a psychoneurosis. What implications did the negative finding *re* psychoses have on the jurors' determination of the sanity or insanity of the defendant? One juror put it this way:

> Didn't that one doctor testify that he had an outside practice and that his whole practice practically was of people who had a neurosis. They're jumpy, nervous, maybe they do funny kinds of things. But you don't see his patients locked up in some institution do you? Well this fellow has a neurosis, or say, he has a mental illness. These other people they have a mental illness and they go to their psychiatrist and get treatment. But you don't see them doing irrational acts and maybe breaking windows or robbing stores.

Or, another juror stated it:

> Now the part that bothers me is the difference between psychoses and neuroses and is a neuroses technically, does it technically come under the heading of insanity? In the language that the experts used, they associated psychosis with the word insanity. And they said the defendant had a neurosis. This one doctor pointed out that he was treating people from the outside world who had neuroses and who were carrying on their everyday business. Neurosis is not an abnormal mental situation, most people are neurotic for one reason or the other. If every one of us in this room went to a psychiatrist for weeks they could find various strengths and weaknesses on our viewpoints on many subjects. I'm sure we would fall under one or another type of category or classification in our general mental outlook.

Or, still another juror made the following analysis:

> Part of the thing that bothers me about this is that everyone of us to some degree has a mental disorder. Anybody that likes the Cardinals but doesn't like the Browns has a mental disorder because I like the Browns, you follow me? So in our different beliefs, and I, oh, I raise my children differently than my neighbor raises his, so there's something wrong with my neighbor. My only point is that in the realm of the mind there is lots of room for differences of thinking and behavior and patterns of organization. Technically, none of the experts crossed the line and said that this man is insane, is definitely insane. They said he had a mental disorder.

A problem especially interesting to trial lawyers is how jurors assimilate conflicting expert opinion; and how in turn this reflects on the status of the expert witness. Thus it, can one still depend upon the testimony that has been "tinged by partisanship" to reflect the accumulated knowledge represented by the particular discipline? While the present trial does not provide the best opportunity for examining jurors' reactions on this problem, in that although both sides called "experts," the psychiatrist for the prosecution made almost a perfunctory appearance, having neither seen nor examined the defendant before his testimony in the courtroom. It may still be of some interest to observe jurors' reactions to the differences in conclusions expressed by the experts. One juror made the following assessment of the situation:

> You understand that there are apparently four different schools of psychiatry, all of whom claim their school was right and the other school wrong; and, although they have made progress in psychiatry, I don't think they identified it as a precise science as yet.

Another juror distinguished the testimony of each side in the following way:

> The big factor in my mind was that the two psychiatrists who testified that he was mentally deranged really examined the defendant. The other one I think the other man was a brilliant man, probably, but the other man definitely had *not* examined this particular gentleman. I would have thought a lot more of his testimony, I mean, I see no reason for disbelieving him, but I would have thought a lot more of his testimony if he had examined him. The other two doctors had examined him and that's an important difference in my opinion.

For some jurors, the testimony of the psychiatrist called by the prosecution was shown to be inadequate under cross-examination and therefore need not be given serious consideration in their deliberation. The following is one such instance:

> As I remember part of the testimony [the testimony of Dr. Grant], the defense attorney was questioning the doctor and that doctor said that sexual perversion is not necessarily insanity; but he said it was disturbed emotions. Then the defense attorney asked what the difference was and the doctor couldn't say.

Before concluding, we might discuss one other aspect of this problem of jurors' evaluation of expert testimony. For those cases in which expert knowledge has been introduced, to whom shall the responsibility be delegated for deciding the issues in the case? In this period of increased expertise and specialization, many criticisms have been raised against the practice of laymen deciding matters about which their knowledge can at best be only on the level of an intelligent amateur. As indicated in the introductory comments in this paper, the early practice of the courts followed the procedure of having the experts serve almost as advisors to the bench. Somewhat later, it was left to the discretion of the judge, whether or not he would acquaint the members of the jury with the information he had acquired from the experts. The procedure, as it is commonly practiced today, is for each side to call the experts of his choice, who then testify for the enlightenment of the jury. How do jurors, as representatives of the general public, react to the idea of relinquishing their responsibility for deciding such cases? In this instance, the specific question posed to the jurors was:

> Which to you, is the best way of deciding what should be done with a person who has committed a crime and pleads that he is insane?
>
> ——He should be tried before a jury, just like anyone else.
>
> ——He should be tried before a judge.
>
> ——He should be turned over by the court to psychiatrists and they should determine what is to be done with him.

Only 7 per cent of the jurors selected the judge. The choice

then was between a jury of laymen or a group of medical experts, and between those two the jury was favored almost two to one. Of the one third who were willing to delegate authority to the psychiatrists, the jurors who found the defendant not guilty by reason of insanity exceeded the guilty-prone jurors to a significant extent. The strongest support for the psychiatrists came from those jurors who found the defendant not guilty by reason of insanity after listening to the "model" psychiatric testimony.

TABLE 5

PER CENT FAVORING PSYCHIATRIST BY PSYCHIATRIC VERSION AND JURORS' VERDICTS*

Verdict	Model	Typical	Combined
NGI	45 (124)**	36 (116)	41 (240)
G	29 (242)	30 (271)	30 (513)
Combined	34 (366)	32 (387)	33 (753)

* [X_1^2 df (.99) = 6.6, $X^2 = 8.59$ $P < .01$.]

** The frequencies (figures in parentheses) do not include the 57 jurors who selected the judge.

But, perhaps the point to be emphasized is that two thirds of the jurors were not ready to relinquish their responsibilities to an expert body. Perhaps the following comment from one of the deliberations captures some of the feelings surrounding this point.

> Just because these doctors are educated and they are way up over our heads, it doesn't mean that we have to accept what they say as truth and that's it. In other words they would be deciding for us. We would not be deciding for ourselves what is right in this particular case. If that were so, then this case should never have gone to a jury. I mean, then we would have to depend upon men specialized in the field of psychiatry to judge this man. The judge said that we could disregard their testimony, if we wanted to. After all, you can't base your whole opinion on the fact that these people have degrees.

V

In this article we have utilized the unusual opportunity of an exposure to the actual protocols of deliberations in order to present information on jurors' reactions to expert psychiatric testimony that went beyond the responses obtained from questionnaires. The jurors listened to a criminal trial involving a charge of incest and a plea of insanity, in which the defense had relied solely on the testimony of two psychiatrists. Both doctors had testified that the defendant was mentally ill for some period preceding the trial and the acts with which he

was charged were not an unexpected result of his earlier experiences In contrast, the prosecution relied primarily on the testimony of lay witnesses, especially the testimony of the defendant's two daughters. They did call as a final witness a psychiatrist who had not examined the defendant and who testified very briefly.

In their reactions and evaluations of the expert testimony, the jurors made several points. They distinguished the contributions made by the defense and government psychiatrists. That is, they acknowledged that a doctor's testimony not based on first hand knowledge of the subject may not be worth as much as testimony which was derived from direct contact. Generally speaking, most jurors granted to the experts the recognition appropriate to their specialized training and greater knowledge. Jurors did not, so far as can be judged at this time, indicate any differences in their evaluation of the "model" in contrast to the "typical" version of psychiatric testimony. The longer, more detailed, straightforward account was not perceived as being significantly more helpful or more influential than the shorter and more technical "typical" version. Generally, jurors indicated that they were impressed with the full scope of the experts' performance on the stand. About three quarters of the jurors indicated that the testimony was helpful, and two thirds did not believe the language they employed was too technical or that more information was needed. But as to the experts influencing the jurors insofar as the verdict was concerned, this was another matter.

It was almost because the jurors recognized that these men were experts, that they were members of a profession, that it gave the jurors license to grant them a certain degree of deference which did not also oblige them to accept the witnesses' statements as directives for their own action. As experts, these witnesses had a position and a view to represent, just as a member of the Chamber of Commerce might present the businessman's view, or a union leader, the working man's perspective. These witnesses represented the views of psychiatry about criminals. It is suggested that for many of the jurors they appeared as extreme and perhaps impractical views which, in the final assessment, most jurors did not choose to accept. This interpretation, concerning the failure of the experts to influence the jurors in their ultimate decisions, that of finding the defendant guilty or insane, is strongly supported by one statistic which we have deliberately delayed reporting: of the sixty-eight juries who heard and deliberated the case, only nine, or 13 per cent, found the defendant not guilty by reason of insanity. In brief, 71 per cent of the juries in finding the defendant guilty voted against the experts, and 16 per cent were unable to arrive at a unanimous verdict.